There is however this difference. In the first case the parties concerned have an opportunity of objecting to the report and can ask the Court to set it aside on certain grounds, one of which is that the referee was biased or not impartial. In the second case, since the proceedings in Executive Council are secret, the party concerned has no right of audience or opportunity of objecting to the report.

The repeal of the Municipal Ordinance 1913, under which the owners could be heard in person or by counsel before the Governor and object to a back-lane scheme, seems to me to emphasize the judicial character of the officer conducting the inquiry on which his report is founded.

Now that the Governor in Council does not hear objections, but makes his order on the report of the reporting officer (if he thinks fit to call for one), it seems to me that, for all practical purposes, the Governor has to a great extent relinquished the quasi-judicial position which he held under the 1913 Ordinance, and by the expression "to inquire and report" these duties have, by the Ordinance, been delegated to the reporting officer.

Reverting to the analogy of the reporting officer and a special referee; it seems to me that the former has a greater quasi-judicial responsibility than the latter, as, in the ordinary course, I assume the reporting officer's report would be adopted by the Governor in Council and there is no right of objection to it, or of appeal.

It follows that in the proceedings before the reporting officer not only must there be entire impartiality; but there must be no suspicion of bias, either real, or what is termed legal bias.

One of the grounds set out in paragraph 2 (3) of the Order *Nisi* (p. 93) is that "the said officer did not conduct the said enquiries or any of them in an impartial or judicial manner—

(a) in that he did not hear the case for the Singapore Improvement Trust in the presence of the owners or their representative,

(b) in that he did not inform the owners of the objections of the Singapore Improvement Trust to the proposals of the owners and give the owners an opportunity of replying thereto."

In para. 5 of their letter of the 21st August 1934 to the Commissioner of Lands relative to the South Bridge Road Scheme, the appellants' solicitors wrote (p. 49):

"If our clients' submission and suggestions are not agreed to they would like to have an opportunity of appearing before you with the writer and their architect, and explaining their attitude in connection with the proposed acquisition," and requesting that the enquiry should not be held until Mr. Afifi's return.

No answer was received to this letter, and the next thing which the appellants knew was that the order of the Governor in Council had been made on the 24th October 1934.

Mr. Ebden, in his affidavit (p.108) dealing with this objection stated:

"(4) that I understood the position to be that the objections raised by Messrs. Sisson & Delay with reference to the 'South Bridge Road' property were all being satisfactorily met, and that there was therefore no further necessity to hear them."

I have only quoted this one example as indicative of the somewhat "free and easy" lines on which the enquiries were conducted.

In my opinion, the learned trial Judge was wrong in his conclusion (p.231) that "Mr. Ebden was himself not even exercising quasi-judicial functions, but was merely enquiring and making a report and recommendation to those who were exercising such functions."

In this respect, I consider his judgment was founded on a fallacy. Under the present system, the Governor's decision must be founded on a report (if one is called for) and if there were irregularities in the inquiry on which the report is based, the Governor is acting on an improper basis.

No useful purpose will be served by my going through in detail the cases quoted by the learned Acting Chief Justice, S.S. I am in entire agreement with the conclusions to which he has arrived, and in my opinion the appeal should be allowed for the reasons given by him.

[COURT OF CRIMINAL APPEAL]

TERRELL, Ag. C.J.

HORNE & LAVILLE, JJ.

August 7, 1937.

RATNAM v. REX.

[SINGAPORE CRIMINAL APPEAL No. 4 of 1937]

Criminal law—murder—evidence pointing to accident—Judge's summing-up—jury directed that accused must be guilty of murder or culpable homicide not amounting to murder—misdirection.

A dispute arose between the appellant, an asphalt-mixer, and a European overseer, since deceased, in consequence of the deceased having called upon the appellant to vacate the coolie lines. Shortly afterwards both the appellant and the deceased were proceeding towards the office and in the course of the journey the appellant stabbed the deceased. The appellant was charged with murder. During the trial, in answer to a question put by the Judge, the appellant stated that he did not intentionally stab the deceased and the effect of his evidence was that the death was purely accidental. In his summing-up the learned Judge directed the jury that the whole case was whether the evidence by the defence was sufficient in

their minds to reduce the charge from murder to culpable homicide not amounting to murder on the grounds that the appellant was provoked, which was the suggestion by his counsel, or if they accepted his story that he turned round with such force that the knife accidentally hit the deceased and that he had no intention of stabbing the deceased. The learned Judge also directed the Jury that the appellant must be guilty of either one of the two offences indicated above, in view of the evidence.

Held, by the Court of Criminal Appeal, that the conviction must be quashed as the learned Judge had misdirected the Jury in two respects. (1) If the jury had accepted the appellant's story that the fatal blow was unintentional and a pure accident, there would be no evidence to support a charge of culpable homicide not amounting to murder, as criminal intention has to be established as fully as in the case of murder. (2) The jury were not directed that if the defence of accident were accepted, the appellant was entitled to an acquittal.

In an appeal to the Court of Criminal Appeal leave is not required to file additional grounds of appeal, when the original notice has been filed in time. Statements, however, sent in at the last moment may result in the application being adjourned and the loss of time would run against the appellant.

CRIMINAL APPEAL.

The facts are summarised in the judgment of the Court of Criminal Appeal (Terrell, Ag. C.J., Horne and Laville, JJ.).

Goho for the appellant.

Storr Crown Counsel, for the Crown.

Cur. Ad. Vult.

The judgment of the Court of Criminal Appeal was delivered by—

TERRELL, AG. C. J.—The appellant was charged with murder in that he stabbed one Klattig with a knife thereby causing his death. He was found guilty and sentenced to death.

The appellant was given leave to appeal by Mr. Justice Howes who was the trial judge. This procedure is not strictly correct. The trial judge is not a member of the Court of Criminal Appeal, and is not accordingly competent to exercise the power of the Court under section 19 of the Court of Criminal Appeal Ordinance. If the appeal was not on a question of law alone, then, under section 5 (b) of the Ordinance, the person convicted may be given leave to appeal on the certificate of the trial judge in the prescribed form, and this is the procedure that should have been followed as the original grounds of appeal did not involve a question of law alone. In the additional grounds of appeal, however, which were filed on the 5th August 1937, the appellant has relied on a misdirection in law, and in such a case the appellant has a right of appeal under section 5 (a) of the Ordinance, and no leave by the Court of Criminal Appeal, or certificate by the trial judge is necessary.

The short facts are as follows—there had been some trouble between the appellant, who had been an asphaltmixer, and the deceased, a Eurasian overseer, in connection with the deceased having called upon the appellant to vacate his quarters in the coolie lines. About 20 minutes later the appellant and the deceased were walking towards the office when the appellant stabbed the deceased.

There was no question that it was the appellant that delivered the fatal blow. The defence put up by counsel for the accused was grave and sudden provocation, but the appellant himself who gave evidence on oath did not allege that he had received any such provocation. He says in his evidence in chief:

"At that moment the deceased dealt me a blow on my side. I suddenly turned round. I was holding the knife in my hand by the handle. .....I turned round with great speed and great force and the knife hit the deceased's stomach."

Then later the learned trial judge asked:

Q. You understand what you say: this wound was an accident?

A. I did not intentionally stab him but when he turned suddenly I hit him.

On reading the accused's evidence it is clear that what he meant to say was, not that he delivered the fatal blow because he was provoked, but that it was purely an accident.

It will now be necessary to consider the summing up. The learned judge correctly directed the jury on the elements necessary to prove murder, and to the effect that provocation, if any, given 20 minutes before could not be relied on as reducing the crime from murder to culpable homicide not amounting to murder. Then later the following passage occurs:

> "As I said before, Gentlemen, you have no question to decide as to whether the accused was the man. That is admitted. The whole case is whether the evidence given by the defence is sufficient in your minds to reduce the charge from murder to culpable homicide not amounting to murder on the grounds either that the accused was provoked, which is the suggestion by his counsel, or if you accept his story which is given on oath that he turned round with such force that the knife accidently hit the deceased and that he had no intention of stabbing the deceased. He said "I did not intentionally stab the deceased; when I turned suddenly round the knife hit him" ."

This can only mean that the learned judge directed the jury that if they accepted the accused's story that the blow was an accident and unintentional, that would reduce the crime from murder to culpable homicide.

There are several other passages in the summing up to the same effect, and towards the end of the summing up the learned judge says:

"There is no question of a "Not guilty" verdict. He must be guilty of one offence or the other in view of the evidence."

It appears to the Court that there was misdirection in two particulars:—

(1) If the jury accepted the appellant's story that the fatal blow was unintentional and a pure accident, there would be no evidence to support a charge of culpable homicide not amounting to murder, as criminal intention has to be established as fully as in the case of murder,

(2) the jury were never directed that if the defence of accident were accepted, the accused was entitled to an acquittal.

According to the practice of the Court of Criminal Appeal in England a misdirection of this kind on a point of law can only result in the conviction being quashed, and the appeal was accordingly allowed and the appellant discharged.

At the commencement of the appeal Crown Counsel called the attention of the Court to the fact that although the original application giving the grounds of appeal was filed within the prescribed period of ten days, subsequently, two sets of additional grounds of appeal were filed without the leave of the Court of Criminal appeal, and Crown Counsel asked the Court for a ruling as to the procedure to be adopted. In matters of this kind this Court will adopt the procedure followed by the Court of Criminal Appeal in England, and it does not appear from the practice of that Court that leave is required to file additional grounds of Appeal, when the original notice has been filed in time, but the Court has pointed out in *William Arthur Willmott and William McLaren* 24 C.A.R. p.54 that statements sent in at the last moment may result in the application being adjourned, and that the loss of time would run against the appellant. Attention may be called to section 16 of the Ordinance which provides that an appellant, pending his appeal, shall be treated as a prisoner on remand, and that if the appeal is dismissed, the sentence shall ordinarily run from the date of such dismissal.

Appeal allowed.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.